



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0145]

RIN 1625-AA87

Security Zones; Christina River, Wilmington, DE; Darby Creek and Schuylkill River, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones for certain navigable waters of the Christina and Schuylkill Rivers and Darby Creek. The security zones are needed to safeguard persons, including those under the protection of the United States Capitol Police (USCP), and property from terrorist acts or incidents and to prevent terrorist acts or incidents while travelling across navigable waters between Wilmington, DE, and Philadelphia, PA. These security zones will be enforced only for the protection of those persons when in the area and will restrict vessel traffic while the zones are being enforced. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port, Delaware Bay or a designated representative.

DATES: This rule is effective from 11 a.m. on March 9, 2022, until 11 p.m. on March 11, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0145 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Jennifer Padilla, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone 215–271–4889, e-mail Jennifer.L.Padilla@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Persons under the protection of the USCP will be travelling to and from a nationally-publicized event in Philadelphia, PA, on March 9, 2022, and March 11, 2022, respectively. The highways to be travelled are located across navigable waters within the Captain of the Port, Delaware Bay’s Area of Responsibility, as set forth at 33 CFR 3.25-05.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule. Immediate action is needed to protect persons under the protection of the USCP, mitigate potential terrorist acts, and enhance public and maritime safety and security. The Coast

Guard was unable to publish an NPRM due to the short time period between event planners notifying the Coast Guard of the event and publication of these security zones. Furthermore, delaying the effective date would be contrary to the rule's intended objective of protecting persons under the protection of the USCP, mitigating potential terrorist acts and enhancing public and maritime safety and security. It is impracticable to publish an NPRM because we must establish the security zones by March 9, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action to restrict vessel traffic is needed to protect life, property and the environment, therefore a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zones' intended objectives of protecting persons under the protection of the USCP, mitigating potential terrorist acts and enhancing public and maritime safety and security.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, Delaware Bay (COTP) has determined that the presence of persons under the protection of the USCP at these locations presents a potential target for terrorist attack, sabotage, or other subversive acts, accidents, or other causes of a similar nature. This rule is needed to protect persons under the protection of the USCP, personnel in and around these locations, navigable waterways, and waterfront facilities.

IV. Discussion of the Rule

This rule establishes three temporary security zones from for certain navigable waters within the COTP Delaware Bay Zone, as described in 33 CFR 3.25-05. Each of the zones will be enforced from 11 a.m. to 11 p.m. on March 9, 2022, and those same hours on March 11, 2022. The duration of the zones is intended to protect persons under

the protection of the USCP, personnel in and around these locations, navigable waterways, and waterfront facilities.

Security zone one will cover all navigable waters of the Christina River, encompassed by a line connecting the following points, beginning at the shoreline down river from the I-495 bridge at 39°43'24" N, 075°31'43" W, thence southwest across the river to the shoreline at 39°43'17" N, 075°31'52" W, thence northwest along the shoreline to 39°43'46" N, 075°32'06" W, thence northeast across the river to the shoreline at 39°43'53" N, 075°31'55" W, thence southeast along the shoreline back to the beginning point, located in Wilmington, DE.

Security zone two will cover all navigable waters of Darby Creek, encompassed by a line connecting the following points, beginning at the shoreline down river from the I-95 bridge at 39°51'52" N, 075°18'46" W, thence northwest across the river to the shoreline at 39°51'53" N, 075°18'50" W, thence northeast along the shoreline to 39°52'20" N, 075°18'39" W, thence southeast across the river to the shoreline at 39°52'08" N, 075°18'31" W, thence southwest along the shoreline back to the beginning point, located in Philadelphia, PA.

Security zone three will cover all navigable waters of Schuylkill River, including the waters of the Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, encompassed by a line connecting the following points, beginning at the shoreline down river from the Girard Point Bridge (I-95) at 39°53'05" N, 075°11'34" W, thence westward across the river to the shoreline at 39°53'03" N, 075°11'48" W, thence northwest along the shoreline to 39°54'04" N, 075°12'56" W, thence eastward across the river to the shoreline at 39°54'07" N, 075°12'48" W, thence southeast along the shoreline back to the beginning point, located in Philadelphia, PA.

No vessel or person will be permitted to enter any of the security zones without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the sizes, locations, and limited durations of the security zones. The first zone impacts a small designated area of the Christina River for 24 total enforcement hours. This portion of the waterway supports Commercial Vessels and tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs mainly during the summer season. The second zone impacts a small designated area of the Darby Creek for 24 total enforcement hours. This portion of the waterway supports recreational vessel traffic, which at its peak, occurs mainly during the summer season. The third zone impacts a small designated area of the Schuylkill River for 24 total enforcement hours. This portion of the waterway supports Commercial Vessels and tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs mainly during the summer season. Although these security zones extend across the entire widths of the respective waterways, these security zones will be enforced only for the protection of those persons when in the area and will restrict vessel traffic while the zones are being enforced. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the security zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zones may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves three temporary security zones lasting only 24 total enforcement hours each that will prohibit entry within certain navigable waters of the Christina and Schuylkill Rivers and Darby Creek. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0145 to read as follows:

§ 165.T05-0145 Security Zones; Christina River, Wilmington, DE; Darby Creek and Schuylkill River, Philadelphia, PA.

(a) *Locations.* The following areas are a security zone: These coordinates are based on WGS 84.

(1) *Security Zone 1.* All navigable waters of the Christina River, encompassed by a line connecting the following points, beginning at the shoreline down river from the I-495 bridge at 39°43'24" N, 075°31'43" W, thence southwest across the river to the shoreline at 39°43'17" N, 075°31'52" W, thence northwest along the shoreline to 39°43'46" N, 075°32'06" W, thence northeast across the river to the shoreline at 39°43'53" N, 075°31'55" W, thence southeast along the shoreline back to the beginning point, located in Wilmington, DE.

(2) *Security Zone 2.* All navigable waters of the Darby Creek, encompassed by a line connecting the following points, beginning at the shoreline down river from the I-95 bridge at 39°51'52" N, 075°18'46" W, thence northwest across the river to the shoreline at 39°51'53" N, 075°18'50" W, thence northeast along the shoreline to 39°52'20" N, 075°18'39" W, thence southeast across the river to the shoreline at 39°52'08" N, 075°18'31" W, thence southwest along the shoreline back to the beginning point, located in Philadelphia, PA.

(3) *Security Zone 3.* All navigable waters of the Schuylkill River, including the waters of the Schuylkill River adjacent to the Navy Yard Reserve Basin Bridge, encompassed by a line connecting the following points, beginning at the shoreline down river from the Girard Point Bridge (I-95) at 39°53'05" N, 075°11'34" W, thence westward across the river to the shoreline at 39°53'03" N, 075°11'48" W, thence northwest along the shoreline to 39°54'04" N, 075°12'56" W, thence eastward across the river to the shoreline at 39°54'07" N, 075°12'48" W, thence southeast along the shoreline back to the beginning point, located in Philadelphia, PA.

(b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector

Delaware Bay.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 215-271-4807 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 11 a.m. to 11 p.m. on March 9, 2022, and, from 11 a.m. to 11 p.m. on March 11, 2022.

Dated: March 3, 2022

Jonathan D. Theel,
Captain, U. S. Coast Guard,
Captain of the Port, Delaware Bay.

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